No. 23-5376

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: KENTUCKY EMPLOYEES RETIREMENT SYSTEM,

Petitioner.

O R D E R

Before: BOGGS, BATCHELDER, and GIBBONS, Circuit Judges.

Kentucky Employees Retirement System ("KERS"), bankruptcy appellant below, petitions for a writ of mandamus directing the bankruptcy court to enter final judgment consistent with our opinion and mandate in *Kentucky Emps. Ret. Sys. v. Seven Cntys. Servs., Inc.*, 823 F. App'x 300 (6th Cir. 2020) ("*KERS 2020*"). In the alternative, KERS asks us to enter final judgment in KERS's favor.

"The traditional use of the writ in aid of appellate jurisdiction . . . has been to confine the court against which mandamus is sought to a lawful exercise of its prescribed jurisdiction." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004) (cleaned up). Because "the writ is one of 'the most potent weapons in the judicial arsenal,'" reserved for only extraordinary causes, three conditions must be present before the petitioner can obtain relief. *Id.* (quoting *Will v. United States*, 389 U.S. 90, 107 (1967)). First, the petitioner cannot have adequate alternative means to obtain the relief it seeks—"a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process." *Id.* at 380–81. Second, the petitioner must show a "clear and indisputable" right to the relief sought. *Id.* at 381 (quoting *Kerr v. U.S. Dist. Ct. for N.D. Cal.*, 426 U.S. 394, 403 (1976)). "Third, even if the first two prerequisites have been met, the issuing

court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *Id.*

KERS has multiple adequate alternative means to obtain review of the bankruptcy court's order. To begin, KERS already has a pending interlocutory appeal before us from the district court's order denying leave to appeal. *See In re Seven Cntys Servs., Inc.*, No. 23-5383 (6th Cir. 2023).

We have rejected similar attempts in the past, denying protective mandamus petitions on the ground that a parallel direct appeal provides an adequate alternative means to relief. *See, e.g.*, *In re Harris Cnty., TX*, No. 22-3493 (6th Cir. Dec. 13, 2022). And the Supreme Court has long held that mandamus should not be used to circumvent or accelerate the appeals process. *See Ex parte Fahey*, 332 U.S. 258, 260 (1947) ("[Common law writs] should be resorted to only where appeal is a clearly inadequate remedy. We are unwilling to utilize them as a substitute for appeal.").

Even if we were to agree with the Second Circuit *(see Gibson v. Kassover* (*In re Kassover*), 343 F.3d 91 (2d Cir. 2003)) that courts of appeals lack jurisdiction to review a district court's discretionary order, KERS can still appeal—to the district court and, if unsuccessful, to this court—after the bankruptcy court enters final judgment. KERS's argument to the contrary relies on the somewhat specious assertion that because the bankruptcy court did not expressly state that its ruling was without prejudice or that there would be further proceedings, KERS cannot obtain a final judgment in that court. A review of the bankruptcy docket suggests that the case is still active—though apparently on hold pending KERS's appeal—and there is no obvious reason that a final judgment will not eventually issue.

The presence of adequate alternative means to obtain review of the bankruptcy court's interlocutory order is a sufficient basis to deny the mandamus petition. *See Cheney*, 542 U.S. at 380. *Cf. Overstreet v. Lexington-Fayette Urb. Cnty. Gov't*, 305 F.3d 566, 579 (6th Cir. 2002) (monetary harm is not irreparable).

Accordingly, the petition for a writ of mandamus is **DENIED**.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk